TIR 09-19: IRS Voluntary Disclosure Initiative Regarding Unreported Offshore Accounts or Assets

Background

By memorandum dated March 23, 2009, the Internal Revenue Service (IRS) announced “a penalty framework to be applied to voluntary disclosure requests containing offshore issues.” US taxpayers are required to annually report their financial interest in, or signature authority over, a financial account that is maintained with a financial institution located in a foreign country if the aggregate value of all such accounts exceeded $10,000 at any time during the year. This reporting requirement is met by filing Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as “FBAR”).

The penalty framework announced in the IRS’ March 23, 2009 memorandum requires those seeking to take advantage of the voluntary disclosure initiative to pay back-taxes and interest for six years and to pay accuracy/delinquency penalties on all six years. They must also pay a penalty of 20% of the amount in the foreign bank accounts in the year with the highest aggregate account or asset value. Persons complying with the IRS memorandum will, however, avoid any potential criminal prosecution. This penalty framework is effective until October 15, 2009.

In Notice 2009-62 dated August 7, 2009, the IRS extended the deadline with respect to certain taxpayers. Pursuant to the Notice, persons with signature authority over, but no financial interest in, a foreign financial account, and persons with a financial interest in, or signature authority over, a foreign commingled fund, will have until June 30, 2010, to file an FBAR for the 2008 and earlier calendar years with respect to these foreign financial accounts.

Implications for Massachusetts Taxpayers

Pursuant to G.L. c. 62C, § 30, if the federal government finally determines that there is a difference from the amount previously reported in the taxable income of a person or estate subject to tax under chapters 62, 63 or 65C, the final determination must be reported by such person or estate accompanied by payment of any additional tax due with interest as provided in G.L. c. 62C, § 32. The Department’s Regulation, 830 CMR 62C.30.1, Changes in Federal Taxable Income, defines a “federal determination” as including “an agreement between the taxpayer and the Commissioner of Internal Revenue to an assessment of any type of liability, including an accepted offer in compromise on an issue of liability.” A “federal determination” is “final” when there is no right of administrative or judicial appeal. 830 CMR 62C.30.1(2). A final determination of a change by the federal government may be initiated by the filing of an amended federal return by the taxpayer. G.L. c. 62C, § 30. Such determination requires a personal income tax filer to report the change in federal taxable income resulting in increased Massachusetts tax liability within one year of the date of notice of the federal government's final determination.[1] The failure to do so will trigger the penalties and interest provisions of 830 CMR 62C.30.1(7). A federal change is reported on Form CA-6, Application for Abatement/Amended Return. See TIR 99-14 (September 3, 1999). Additional documentation may also be required. See, 830 CMR 62C.30.1(3).

The Department is not, by virtue of this TIR, undertaking its own voluntary disclosure program relative to offshore accounts. The purpose of this TIR is merely to inform Massachusetts taxpayers of the federal program and to remind them of the corresponding obligation to file federal change reports with the Commonwealth. The provisions of the Department's prior TIRs with respect to voluntary disclosure (e.g., TIR 03-17; TIR 08-4; TIR 09-02) do not apply in the context of the fact patterns referenced by this TIR. These prior TIRs are generally intended to apply to non-filer (as opposed to underreporting) situations.

/s/Navjeet K. Bal
Navjeet K. Bal
Commissioner of Revenue

NKB:MTF:ds

September 24, 2009

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[1]Corporate excise filers under G.L. c. 63 must report the change in federal taxable income resulting in increased Massachusetts tax liability within three months of the date of notice of the federal government's final determination. Estate tax filers under G.L. c. 65C must report such change within two months of the date of notice.